DOCUMENT RESUME

ED 288 476 HE 021 003

AUTHOR	Matteoli, Thomas E.
TITLE	"Yeshivawatch"--Year Eight. The Impact of Post-Yeshiva Decisions.
INSTITUTION	City Univ. of New York, N.Y. Bernard Baruch Coll. National Center for the Study of Collective Bargaining in Higher Education and the Professions.
PUB DATE	Oct 87
NOTE	10p.
AVAILABLE FROM	National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, 17 Lexington Avenue, New York, NY 10010 ($4.00; members, free).
PUB TYPE	Collected Works - Serials (022) -- Viewpoints (120)
JOURNAL CIT	Newsletter of the National Center for the Study of Collective Bargaining in Higher Education and the Professions; v15 n4 Sep-Oct 1987
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Administrator Responsibility; *Collective Bargaining; *College Faculty; *Court Litigation; Employment Practices; Evaluation Criteria; Faculty College Relationship; Higher Education; *Personnel Policy; Private Colleges; Teacher Responsibility; Trend Analysis; *Unions
IDENTIFIERS	Fairleigh Dickinson University NJ; *National Labor Relations Board v Yeshiva Univ

ABSTRACT

The impact of the Supreme Court decision in National Labor Relations Board (NLRB) and Yeshiva University Faculty Association v. Yeshiva University is assessed. The thrust of the decision is explained and the most recent "Yeshiva" ruling at Fairleigh Dickinson University is discussed. Evaluative criteria used to determine the managerial status of a college's full-time faculty are identified under the broad categories of academic educational policy and academic personnel policy. In reaching decisions concerning the managerial status of college or university faculty, the NLRB seems to be taking two approaches. The first is fact-finding, in which the decisional areas listed in the Yeshiva decision and expanded upon by guidelines are applied. The second approach is quantitative and considers the percentage or degree of effective control exercised by the faculty. Data are provided to illustrate the extent of Yeshiva claims. Reasons that the Yeshiva decision has not affected the most unionized faculty are proposed, and implications of the decision for the future are considered. A chart is included that indicates the disposition of Yeshiva decisions for 1980-1987. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED288476

NEWSLETTER - National Center for the Study of Collective Bargaining in Higher Education and the Professions

Published at Baruch College - City University of New York Vol 15, No. 4 - Sept/Oct 1987

"YESHIVAWATCH" -- YEAR EIGHT

THE IMPACT OF POST - YESHIVA DECISIONS

Thomas E. Matteoli, Ed.D.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

NCSCBHEP
Baruch College, CUNY

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

NE 021 003

BEST COPY AVAILABLE

NEWSLETTER
NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS
Published at Baruch College • City University of New York • Vol. 15, No. 4 • Sept/Oct 1987

"YESHIVAWATCH"—YEAR EIGHT

THE IMPACT OF POST-YESHIVA DECISIONS

Thomas E. Matteoli, Ed.D.*

Editor's Note: This issue marks the eighth annual "Yeshivawatch", a project that updates recent developments. Tom Matteoli of the University of San Francisco, a labor relations practitioner and faculty member, wrote this Newsletter based on his research. We asked Dr. Matteoli to concentrate on the events of the past year and to include in his analysis the Yeshiva-related evaluative material upon which the NLRB has relied. This issue does not include two new Yeshiva-related cases, the University of Pittsburgh, which is currently on appeal to the Pennsylvania Labor Relations Board and Dean Junior College, Massachusetts, which is currently being litigated at the NLRB regional director level. Both of these will be discussed in subsequent Newsletters. We have also included an updated National Center "Yeshivawatch" Disposition List.

THE DOCTRINE

On February 20, 1980, the United States Supreme Court issued its decision in NLRB and Yeshiva University Faculty Association v. Yeshiva University, 444 U.S. 672 (1980). The case stemmed from a refusal by Yeshiva University to obey an order of the NLRB to engage in collective bargaining with the Yeshiva University Faculty Association (YUFA) a union of full-time faculty designated by the Board as the sole exclusive bargaining representative for the University's faculty. During the Board bargaining unit hearings, the University contended that the faculty were managerial and/or supervisory employees and thus outside the coverage of the Act and not entitled to collective bargaining rights under the Act. The Board sought enforcement of its order in the Second Circuit Court of Appeals. In NLRB v. Yeshiva University, 582 F.2d 686 (2d Cir. 1978), the Second Circuit refused enforcement and instead held that full-time faculty at the University were "managerial employees" and outside the coverage of the Act. The U.S. Supreme Court, on appeal, granted certiorari and, by a 5 to 4 majority, affirmed the decision of the Second Circuit, refusing to enforce the Board's collective bargaining order.

In its Yeshiva decision, the U.S. Supreme Court concluded that the faculty exercised virtually complete, if not absolute, authority in academic matters and substantial authority in nonacademic matters. The Court then concluded that the faculty effectively controlled and implemented University policy in that it determined the "product to be produced, the terms upon which it would be offered, and the customers who would be served" in a mature higher education institution setting. Clearly, the Court asserted, governance of the institution was largely a collegial matter; the real authority for fundamental decisions regarding management policies was vested in the faculty as a group.[1]

Areas the Court considered vital in its Yeshiva decision were the degree to which the faculty exercised virtually complete, if not absolute, authority in the area of purely academic concerns, including curriculum, course offerings, course schedules, grading, graduation requirements, examinations, faculty workload, admissions, and teaching assignments. In areas beyond the strictly

---

*Dr. Thomas E. Matteoli is Director of Labor Relations and Assistant Professor at the University of San Francisco. The author acknowledges the assistance of Dr. Daniel J. Julius, Associate Vice President for Academic Affairs and Ms. Lynn Hunter, Administrative Assistant, in preparing this manuscript.

TABLE OF CONTENTS

"Yeshivawatch" — Year Eight
The Impact of Post-Yeshiva Decisions..... 1

"Yeshivawatch" Disposition List — 1980-1987.... 8

academic sphere, the Court based its decision on whether the faculty exercised substantial control over certain matters such as faculty and administration hiring and terminations, faculty tenure, promotion and reappointment, faculty salaries, facilities planning, and budgetary matters.[2]

Nevertheless, in its Yeshiva decision, the U.S. Supreme Court asserted that the controlling consideration in determining managerial status was the degree of faculty control over academic matters.[3] The Court defined academic matters to mean: course offerings, course schedules, teaching methods, graduation policies, matriculation standards, grading systems and admissions. Since the U.S. Supreme Court's decision in 1980, faculty collective bargaining at private colleges and universities has undergone significant change with respect to the evolution of the legal underpinnings associated with the bargaining unit status of faculty. Following the Court's Yeshiva decision and the Guidelines of the General Counsel to the Board containing criteria for evaluating the bargaining unit status of faculty, several colleges and universities with Board certified faculty bargaining agents successfully filed Yeshiva-like claims with the Board. As a result of these claims, the Board revoked the certification of the faculty union as the exclusive representative on the basis that the faculty were "managerial employees" and that, therefore, the faculty union no longer could be considered a labor organization within the meaning of the Act.

Some observers have noted that in institutions where Yeshiva challenges have been raised, faculty-administration relations had not yet attained what practitioners call a "mature bargaining relationship". For example, in half of the schools raising Yeshiva challenges, the exclusive representative had yet to negotiate a first contract. At American International College (MA), Saint Theresa College (MN), Seton Hall University (NJ), and Parsons School of Design (NY) exclusive bargaining agents were never elected. In other cases, notably Stephens College (MO), University of Albuquerque (NM), Curry College (MA), Villanova University (PA), Salem College (WV), Seattle University (WA), Saint Joseph's College (NY), Bradford College (MA) the faculty previously voted for "no agent" or had voted to decertify the agent before or during the period when the administration challenged the union, employing Yeshiva-like arguments.[4]

FAIRLEIGH DICKINSON UNIVERSITY (FDU)

In the most recent Yeshiva ruling, Fairleigh Dickinson University, decided in 1987, the regional director of the NLRB, Newark, N. J., held that the faculty at FDU were managerial employees and revoked the faculty union's certification. He found that the faculty through their participation "in a variety of committees make recommendations regarding various university policies and procedures, including academic standards, admission requirements, final examinations, retention, tenure and promotion of faculty members, and the selection of deans".[5] Through their Board certified bargaining agent the faculty had entered into collective bargaining agreements with the university, the last collective bargaining agreement having expired on August 31, 1986. Various sections of the expired collective bargaining agreement specifically set forth the criteria for consideration and the procedures for committee recommendations at each of the university's colleges.

The regional director overruled the Fairleigh Dickinson University Faculty Council's argument to the contrary and found that the university followed the recommendations of the College Faculty Status Committee (CFSC) in every sabbatical and renewal case and all but one tenure case during 1981-1986. Moreover, on the award of promotions, the university likewise followed the majority of CFSC recommendations. In other words, the faculty actively participated in personnel actions and effectively made recommendations to university administration on matters pertaining to renewal, tenure, promotion and sabbaticals.[6]

He further held that the faculty was effectively involved in the governance of the university.

> Unanimous decisions at all levels in a college governance system are not required. In the industrial situation, decisions are sometimes implemented by the Board of Directors over objections of company presidents, managers and supervisors but this does not warrant a conclusion that they do not have any impact on the policies and direction of the company.[7]

Finally, as the faculty argued in College of Osteopathic Medicine and Surgery, the Council at Fairleigh Dickinson University claimed that whatever authority the faculty now enjoyed was gained through the collective bargaining agreement and that if the Union's certification was removed, the University would be free to unilaterally remove any managerial authority previously achieved through collective bargaining, thus causing the faculty to be non-managerial. The regional director, in striking down the Council's claim that faculty could not bargain themselves out of the Act's protection, relied on the Board's College of Osteopathic Medicine and Surgery decision wherein it held:

> The Yeshiva decision does not expressly or impliedly distinguish situations in which managerial authority was gained through collective bargaining from situations in which such authority was more freely granted and we do not believe that such a distinction is required by the Act. Accordingly, we must look to the extent of managerial authority held by college faculties rather than the manner in which such authority was obtained.[8]

In those cases since Yeshiva in which the faculty were found to be managerial employees, their recommendations were overwhelmingly followed by academic management in matters relating to tenure, retention, promotion and evaluation. Hence, they exercised significant authority, responsibility, and control which, in any other context, would unquestionably be managerial.

In both Boston University and Fairleigh Dickinson University, Board agents have held that faculty exercise significant control and substantial authority over the formulation and implementation of academic operations within their respective schools and colleges to the extent that such authority is without question managerial. Moreover, the faculty at Boston and Fairleigh Dickinson have been found to effectively determine curriculum, course or program offerings, graduate and undergraduate admission requirements, grading, examinations and degree requirements, methods of teaching, class size and textbooks, faculty hirings and sabbatical leaves of absence, retention, tenure and promotion policies and faculty evaluation. "When one considers the functions of a University, it is difficult to imagine decisions more managerial than these."[9]

EVALUATIVE CRITERIA

These decisions have demonstrated that irrespective of the fact that college bargaining agreements were in place in the above referenced institutions when institutional management filed Yeshiva-like claims, the faculty were found to exercise significant and substantial authority in "key" Yeshiva decisional criteria to the extent that the faculty were found to be managerial employees, thereby causing the union's certification to be revoked and the collective bargaining agreements to be rendered invalid. In other words, the collective bargaining agreements contained the operative language referenced in the "key" Yeshiva evaluative criteria thereby enabling these institutions to successfully initiate Yeshiva challenges.

The decisions rendered by the Board relied on certain "key" Yeshiva evaluative criteria to determine the managerial status of these institutions' full-time faculty. Generally, these criteria can be divided into two broad categories:

I. Academic Educational Policy. This category includes the following Yeshiva criteria relating primarily to the institution's educational mission:

   1. Curriculum which includes course content, schedule, changes and textbooks.
   2. Teaching loads or work loads.
   3. Grading system and policies, including examinations.
   4. Admission policies.
   5. Graduation policies, including degree requirements.
   6. Teaching methods.
   7. Class size.

II. Academic Personnel Policy. This category includes the Yeshiva criteria relating to the employment relationship between the faculty and the institution:

   1. Faculty hiring.
   2. Faculty evaluations.
   3. Tenure.
   4. Retention policies.
   5. Promotions.
   6. Sabbaticals.

The Board and reviewing courts appear to rely on these "key" Yeshiva criteria when determining the managerial status of an institution's full-time faculty.

POST-YESHIVA DECISIONS

In reaching its decisions concerning the managerial status of college or university faculty, the Board seems to be taking two approaches. The first approach is that of fact-finding, in which the decisional areas listed in the Yeshiva decision and expanded upon by the Guidelines are applied; the second approach is quantitative and considers the percentage or degree of effective control exercised by the faculty. For example, the decision in Wagner College to revoke the faculty's collective bargaining certification was based, for the most part, on the fact the Wagner faculty exercised effective control in less than fifty percent of the Yeshiva decisional criteria.[10] However, in Boston University and Fairleigh Dickinson University, the Board found that the faculty exercised significant control and authority in the overwhelming majority of those "key" Yeshiva decisional criteria.

Moreover, of significant importance to the Board has been the degree to which institutional management accepts or follows recommendations and the role of the academic deans and department chairpersons with respect to these recommendations, that is, are the faculty's recommendations followed without question or does institutional management or the deans and chairpersons substantially modify or reject these recommendations?

A review of the Board's post-Yeshiva decisions appears to substantiate that the Board is attempting to follow both a fact-finding and quantative approach when evaluating the bargaining unit status of faculty. Yet, the Board appears to be inconsistent. There are no easy analogues for the Board's rationale or apparent lack of rationale in reaching these decisions.[11]

However, despite the fact that the Board's post-Yeshiva decisions have been less than consistent, the Board in interpreting the Yeshiva evaluative and decisional criteria has departed from the Court concerning the degree of authority faculty must exercise in those "key" Yeshiva areas to be considered managerial. While the Court referred to "absolute authority" in the area of academic concerns, the Board appears to look for "almost" plenary authority in academic matters. In Yeshiva, the Court found that faculty exercised "substantial control" over institutional concerns beyond the strictly academic sphere. The Board has looked to whether the faculty members play a "dominant" role or have "significant input" in these areas.[12]

Finally, is there a relationship between the apparent evolution of the Board's post-Yeshiva decisions and the behavior of institutional management and faculty? The fact that the Board's post-Yeshiva interpretations have been inconsistent and unclear will, no doubt, cause relationships between institutional management and faculty to be somewhat strained and certainly less than collegial. The Board has yet to develop a definitive set of procedural and substantive criteria upon which institutional management and faculty might measure the extent of faculty authority and control. The Board has either been unable or unwilling to separate higher education from the industrial private sector. Rather, the Board continues to apply its industrial model case-by-case approach to higher education. Such application can only result in inconsistencies and unclear decisions.

IMPACT ANALYSIS

Has the Yeshiva decision left a discernible impact on private and public higher education? Probably not. Data gathered by the National Center for the Study of Collective Bargaining in Higher Education and the Professions (NCSCBHEP), Baruch College, City University of New York (CUNY), indicate that there are now 1012 unionized private and public colleges and universities represented by recognized faculty collective bargaining agents. Unionized public sector campuses now total 921 and account for 61 percent of the 1501 public campuses. In the private sector, approximately five percent of the 1830 campuses are unionized.[13]

In 1987, according to the NCSCBHEP, approximately 30 percent of the 3331 colleges and universities in the United States had selected bargaining agents. The NCSCBHEP reports that there are approximately 700,000 total faculty; of this number, 506,000 faculty teach at public institutions and 195,000 faculty teach at private institutions. Currently, 208,000 of all public and private college and university faculty, or approximately 40 percent, bargain collectively, and 95 percent of these (198,000) are employed by public institutions. Only 9500, or five percent, of private college and university faculty work in unionized environments.[14]

The NCSCBHEP further reports that of the 381 public institutions now unionized, 88 are four-year institutions, while the remaining 293 are two-year institutions. For the most part, public two- and four-year institutions remain relatively untouched by Yeshiva and continue to bargain collectively.

At this time, approximately thirty states have enacted some form of policy enabling collective bargaining at the institutional level.[15] To date, only three Yeshiva-related claims have been made in public jurisdictions.[16] Therefore, it would appear that the Yeshiva decision has failed to significantly influence state legislation.

As of January 1987, according to the NCSCBHEP, faculties at 77 private two-year and four-year institutions had elected an exclusive representative. A total of 69 agreements are currently intact, covering approximately 9500 faculty.[17] As one observer notes:

> In many larger and mature colleges and universities, the administration has decided not to sever the bargaining relationship by initiating a Yeshiva-like claim. For example, institutions such as Bard College, St. John's, Hofstra, Adelphi, and Niagara universities, Monmouth College, New York Institute of Technology, Wentworth Institute of Technology, the universities of Bridgeport and Scranton, Roger Williams College, Rider College, Bloomfield College, and University of Detroit, the and the University of San Francisco, have not raised Yeshiva claims in an effort to decertify faculty bargaining agents.[18]

According to Douglas, since the U.S. Supreme Court's Yeshiva decision in 1980, a total of fifty-five colleges and universities have endeavored to utilize the Yeshiva decision to end an established collective bargaining relationship and of these twenty colleges and universities (excluding Yeshiva University) have filed Yeshiva-like claims that have resulted in the decertification by the Board of that institution's faculty bargaining agent. In five colleges and universities, the faculty bargaining agents, when faced with Yeshiva-like claims, voluntarily withdrew certification. In eight of these twenty institutions, comprehensive collective bargaining agreements had previously been negotiated.[19]

These private schools initiating Yeshiva-like claims are, for the most part, not representative of institutions most often associated with faculty unions. They tend to be somewhat small, relatively unprestigious liberal arts or specialized institutes where enrollment or leadership is a concern. For example, at Bradford College (MA), Pratt Institute (NY), Kendall School of Design (MI), Adrian College (MI), Montefiore Hospital and Medical Center (NY), Florida Memorial College (FL), and New York Medical College (NY), the NLRB either dismissed the

unit clarification petition or ruled that the faculty were not managerial and had not gained sufficient decision-making authority through the collective bargaining agreement to constitute managerial employees status.[20]

In the types of institutions where Yeshiva challenges have been made (in all but four cases, bargaining units were comprised of fewer than 200 faculty, and in five cases, bargaining units were comprised of over 100 but less than 200 faculty), bargaining agents were often challenged by competing organizations. It appears likely, therefore, one might consider that faculty unionism was never firmly entrenched in colleges where Yeshiva claims were successfully raised. For example, in almost half of the 55 schools raising Yeshiva challenges, the exclusive representative had yet to negotiate a first contract. To what extent the Yeshiva decision played a role in this action is not clear. Lastly, in four other schools where Yeshiva challenges were raised, faculty had previously voted out one bargaining agent in place of another or switched allegiances to another coalition of bargaining agents.[21]

In sum, the total number of faculty involved in all 55 Yeshiva challenges (about 5200) represents less than three percent of the total number of faculty (208,000) who bargain collectively. These 55 institutions represent less than six percent of all (1012) unionized colleges and universities. The total number of faculty involved in actual Yeshiva-related decertifications since 1980 (3000) represents approximately one percent of all faculty working in unionized institutions. The total number of institutions (20) represents less than two percent of all unionized colleges and universities. The total number of institutions (8) with prior collective bargaining agreements represents 40 percent of the total number of decertified institutions, but less than 15 percent of all institutions who have raised a Yeshiva challenge. Even in the private sector, the total number of faculty working in these 20 institutions represents only 31.5 percent of all unionized faculty at private institutions.[22]

THE LIMITS OF YESHIVA

The fact that Yeshiva has not impacted the most unionized faculty can be attributed to:

1. Yeshiva has not been extended to public sector institutions where most unionized faculty work. Not one faculty in a public institution has been disenfranchised as a result of Yeshiva. Public employees bargain under the aegis of state public sector enabling legislation, not the NLRA.

2. In private colleges and universities where mature bargaining relationships have replaced collegial systems of governance, both the administration and faculty appear to have a vested interest in maintaining that bargaining relationship. A collective bargaining agreement can be perceived as a powerful governing tool when administered by a seasoned management team. From the faculty's perspective, the probability that appointment, promotion and tenure decisions will be made in an arbitrary manner is diminished when such personnel actions are subject to contractually mandated grievance procedures.

3. The NLRB has not been consistent or clear in its interpretations of Yeshiva. The key issue remains how the Board interprets the meaning of "mature". Their penchant for determining each case on its own factual record may guarantee lengthy court proceedings and encourage local faculty leaders to either oppose challenges that would terminate the bargaining relationship or settle and agree to a memorandum of understanding outside of the NLRA.

4. Lastly, while the faculty receive the most attention, forgotten is the fact that faculty are often the only employee group on campus to remain unorganized. For example, in the University of California, State University of New York, Boston University, the universities of Michigan, Iowa, Illinois, Yale, Columbia, Harvard and numerous other public and private institutions throughout the United States, clerical, maintenance and operations, skilled crafts, health care support, public safety and other non-teaching professionals are either unionized or being actively pursued by union organizers. In this era of fiscal exigencies brought about by curtailment of federal aid and declining enrollments, faculty may see that options available to the organized are closed to those not belonging to a union.

Seen in this context, Yeshiva has not and probably will not affect faculty in public systems. Nor has Yeshiva had an appreciable impact on most of the larger, traditional, secular, eastern colleges/universities where faculty bargaining has been most common. Union organizing has slowed at private institutions where the impetus for collective action usually comes in response to a dramatic decline in enrollment and concommitant fiscal problems, or a change in institutional mission leadership caused again by any number of enrollment-related factors. However popular the Yeshiva option may be in these institutions, such schools remain outside the mainstream of this phenomenon in higher education.[23]

Is it practical for a private higher education institution to file a Yeshiva-like claim with the NLRB to seek revocation of a faculty association's certification on the basis that the faculty are managerial employees? When considering the "practicality" of "Yeshivatizing" faculty, institutional management must be cognizant of the degree of significant influence and/or substantial authority and effective control faculty exercise in those matters relating to academic education and academic personnel policy. Do faculty exercise considerable and significant influence and authority in the formulation and implementation of those previously

referenced "key" Yeshiva criteria which might be contained in a collective bargaining agreement or faculty handbook? Are the basic foundations of collegiality and shared governance — peer evaluations, retention, tenure and promotion policies present or absent? Finally, institutional management must consider the extent to which the faculty exercise effective control and substantial influence over the institutions' academic operations. Or, are the faculty, on the basis that their authority and recommendations in certain key non-academic Yeshiva-related areas is practically nonexistent, to be considered professional employees who are hence eligible to enter into collective bargaining? In other words, are academic decisional criteria to be given equal, more or less weight than non-academic criteria in determining the managerial status of an institution's faculty?

IMPLICATIONS FOR THE FUTURE

What are the implications that the post-Yeshiva decisions hold for the practitioner? Recent data gathered by the NCSCBHEP suggests that the Yeshiva decision has apparently failed to hasten the expected demise of collective bargaining in private higher education. Quite the contrary, as previously stated, since the U.S. Supreme Court's Yeshiva decision in 1980, only 20 Yeshiva-like claims have resulted in revocation of a faculty association's prior collective bargaining status and of these, only eight decertifications took place in institutions with previously negotiated collective bargaining agreements. Moreover, since 1980, there have been only 55 Yeshiva challenges; 32 of these taking place in the first year after the Yeshiva decision.[24]

Private colleges and universities continue to remain basically union-free, free from collective bargaining obligations. This is probably due, in large part, to the evolution of a "mature" system of shared academic governance and collegiality through, for example, the academic or institutional senate and/or joint consultative committee structure; thereby rendering the desire or, for that matter, the need for collective representation by the latter rank faculty unnecessary.

However, since data gathered subsequent to the Yeshiva decision are indicative that Yeshiva has had less than a discernible impact upon private higher education, the practitioner is cautioned not to dismiss the fact that the Board has developed a particular set of Yeshiva evaluative and decisional criteria, albeit somewhat inconsistent, vague and unclear, upon which to "test" the collective bargaining status of an institution's faculty.

However, in the event an institution, by asserting a Yeshiva challenge, seeks to terminate a previously established collective bargaining relationship with its faculty, the institution must consider those advantages and disadvantages that a Yeshiva defense would present. What would be the costs and the outcomes? In addition to those "practicality" questions stated above, the institution is advised to consider, for example, the following questions:

1. What will be the institution's commitment to expending the financial resources necessary to an extensive Yeshiva litigation?

2. To what extent will costly and time consuming litigation disrupt and detract from the academic mission of the institution?

3. What will the level of instruction be if the faculty protest Yeshiva litigation and how will disregard for workload, teaching assignments and classroom responsibility be addressed?

4. Will the institution experience declining enrollments?

5. In defending faculty rights to collective bargaining, will faculty attempt to elicit student and community support?

6. How will the institution respond?

7. Will Yeshiva litigation place a severe strain upon the collective bargaining relationship and regardless of the final outcome, will the relationship with the faculty be salvageable?

The practitioner should consider these and other questions as well as conducting extensive research prior to reaching a decision for or against seeking a Yeshiva decertification.

The impact of the post-Yeshiva environment on private two-year and four-year higher educational institutions has indeed been minimal. Collective bargaining for institutional faculty will not diminish due to Yeshiva, since most of those Yeshiva-related cases previously in litigation have been adjudicated. In fact, at this time, there have been no cases appealed to the federal judiciary concerning the application of Yeshiva.

In conclusion, while the seeds of the Yeshiva decision probably will not be sown throughout two-year and four-year institutions to the point of any appreciable impact, the fact that the U.S. Supreme Court laid the foundation upon which to build a Yeshiva-like claim cannot be readily ignored. The resultant evaluative criteria set forth by the Board in subsequent Yeshiva-related decisions have provided both institutions and faculties with some framework of action. The post-Yeshiva decisions are such that collective bargaining in academe might evolve from adversarial to collegial as institutions and faculties forge an accommodation to the realities of the labor relations environment in the late 1980's and beyond.

END NOTES

1. NLRB v. Yeshiva University, 444 U.S. 672 at 686 (1980).

2. Polytechnic Institute of New York, NLRB Case No. 29-61-136, at 29 (1984).

3. 444 U.S., Note 1, at 677, 686. The Court defined academic matters to mean: course offerings, course schedules, teaching methods, graduation policies, matriculation standards, grading systems and admissions.

4. Discussions held with Daniel J. Julius, Associate Vice President for Academic Affairs, University of San Francisco. See also Ellen Earle Chaffee, "The Human Element is the Bottom Line: The Confidence Factor and Institutional Vitality", paper presented at the 12th Annual Conference of the NCSCBHEP, New York City, April 30, 1984, and Robert Birnbaum, "The Effect of Faculty Collective Bargaining on Campus Climate", a paper presented at the annual meeting of the Association for the Study of Higher Education, Washington, D.C., March 26, 1983.

5. Fairleigh Dickinson University, NLRB Case No. 22-RC-7198 (1987).

6. Ibid., at 9.

7. Ibid., at 24.

8. College of Osteopathic Medicine and Surgery, 265 NLRB 295 at 298 (1982).

9. 444 U.S., Note 1, at 686. See also, Trustees of Boston University and Fairleigh Dickinson University, supra.

10. Barbara A. Lee and James P. Begin, "Criteria for Evaluating the Managerial Status of College Faculty: Applications of Yeshiva University by NLRB", Vol. 10, Journal of College and University Law, 222 (Washington, D.C.: National Association of College and University Attorneys, 1983-1984), at 234.

11. See, Florida Memorial College, 263 NLRB 7248 (1982), where the Board held that the faculty were non-managerial despite evidence to the contrary as they determined teaching methods, student evaluations, course content and course schedules, etc., and Kendall School of Design, 279 NLRB No. 42 (1986) where the Board likewise held that the faculty were non-managerial because they exercise little authority or control over academic matters.

12. See e.g., Fairleigh Dickinson University, Trustees of Boston University, Polytechnic Institute of New York, and College of Osteopathic Medicine and Surgery, supra. See also, the 7th Circuit Court's Yeshiva decision in Lewis University, supra.

13. Joel M. Douglas, Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education, Vol. 13 (New York: National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York, January 1987).

14. Ibid., at IX.

15. Ibid., at V.

16. In the University of Alaska, the State Labor Relations Board denied the University's Yeshiva claim and ordered unit determination hearings. At Wichita State University, the Kansas State Public Employment Relations Board rejected the University's Yeshiva argument and established appropriate bargaining units. Finally, the University of Pittsburgh successfully sought to disenfranchise the faculty on the basis that they exercised Yeshiva-related criteria. The decision is currently on appeal.

17. Douglas, Note 13, at 97, 98 and 101.

18. Julius, Note 4.

19. Douglas, Note 13, at 106. See, e.g., Duquesne University, 261 NLRB 587 (1982); Thiel College, 261 NLRB 580 (1982); Ithaca College, 261 NLRB 577 (1982); University of New Haven, 267 NLRB 937 (1983); College of Osteopathic Medicine and Surgery, 265 NLRB 295 (1982); Stevens Institute of Technology, No. 22-CA-10267 (1982); Seton Hall University, No. 22-RC-8765, 22-RM-599 and No. 22-UC-96 (1983); and Polytechnic Institute of New York, NLRB Case No. 29-RC-136 (1984).

20. Julius, Note 4.

21. Ibid.

22. Douglas, Note 13, at 106-108.

23. Daniel J. Julius, Editor. Collective Bargaining in Higher Education: The State of the Art. (Washington, D.C.: The College and University Personnel Association, 1984), at iii.

24. Douglas, Note 13, at 106-107.

NATIONAL CENTER NEWSLETTER

A publication of the National Center issued five times during the year. Annual subscription rate: $20; single copy, $4.00; free to Center members. Back issues available. ISSN 0737-9285

Editor and Director of the Center: Joel M. Douglas
Executive Assistant to the Director: Beth Johnson
Administrative Assistant: Ruby N. Hill
Research Assistants: Beth Genya Cohen
Jasmine Tata

Address all inquiries and contributions to the National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, 17 Lexington Avenue, Box 322, New York, N.Y. 10010. Telephone: (212) 725-3390.

"YESHIVAWATCH" DISPOSITION LIST–1980-1987

Institution	Voluntary Resolution	Non-Managerial	Managerial	Union Decertified	Other
Adrian College		X			
Amer. Int'l Coll.					Pending
American Univ.		X			Eng. Inst.
Ashland College	X				
Boston University			X	X	
Bradford College		X			
Catholic U. Law Sch.			X	X	
Coll. of Osteo. Med.			X	X	
Coll. of St. Theresa	X				
Cooper Union		X			
Curry College	X				
Daemen College	X				
Dean Junior College					Pending
Drury College	X				
Duquesne Univ.			X		
Fair. Dickinson U.			X	X	
Fla. Memorial Coll.		X			
Ithaca College			X	X	
Kendall Sch. Design		X			Appealed
Lewis University			X	X	
Livingstone College		X			Appealed
LIU-Bklyn. Ctr.	X				
LIU-C.W. Post	X				
LIU-Coll. of Phar.	X				
LIU-Southampton	X				
Loretto Hgts. Coll.		X			
Milton College					Closed
Montefiore Med. Ctr.	X				
Mt. Allison U. (Can.)		X			
Mt. Vernon Coll.	X				
Nasson College					Bankrupt
NY Medical Coll.		X			
Ohio Northern Univ.			X	X	
Parson's Sch. Design		X			Adj. Fac.
Polytechnic Institute			X	X	
Pratt Institute		X			
Puerto Jr. Coll.		X			
Rio Grande Coll.	X				
St. Joseph's Coll.		X			Appealed
Salem College			X	X	
Seattle University					Pending
Seton Hall Univ.			X	X	
Simon's Rock Coll.	X				
Stephens Coll.(MO)			X	X	
Stephens Inst. Art		X			
Stevens Inst. Tech.			X	X	
Thiel College			X	X	
Univ. of Alaska					Public
U. of Albuquerque			X	X	
U. Cent. de Bayamon		X			
Univ. of New Haven			X	X	
Univ. of Pittsburgh			X		Appealed
Villanova Univ.					Pending
Wagner College			X	X	
Wichita State U.					Public
Wilberforce Coll.		X			
Wordsworth Acad.		X			
Yeshiva University			X	X	

Source: NCSCBHEP Research